

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
DOCKET NO. 5:13-cr-00053-MOC-DCK

UNITED STATES OF AMERICA,

Vs.

RIKKI ANN OSBORNE,

Defendant.

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ORDER

THIS MATTER is before the Court on defendant's pro se "Motion Requesting Modification of Sentence Pursuant to 18 USC 3582 for Minor Role participant - USSG Amendment 794." (#476).

Amendment 794 amended the commentary to § 3B1.2 to address what the Commission considered was an inconsistent application of the mitigating role reduction for low-level offenders. In particular, the amendment added a non-exhaustive list for the court to consider when determining whether to apply the guideline and to what extent. See USSG § 3B1.2 cmt. n.3(C) (2015). The Commission made the amendment effective for defendants sentenced on or after November 1, 2015.

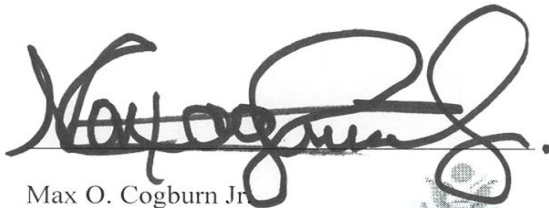
Review of the pleadings reveals that Judgment was entered in this matter on November 10, 2014, and became final soon thereafter as no direct appeal was lodged. Thus, Amendment 794 has no application to the 2014 sentencing in this case. Further, Amendment 794 does not apply retroactively to sentences that have become final. Kemp v. United States, 2017 WL 455403, at *1 (E.D.N.C. Feb. 2, 2017). An amendment must be expressly listed in U.S.S.G. § 1B1.10(d) in order for the amendment to receive retroactive application. United States v. Brewton, 2017 WL 1242007

(4th Cir. Apr. 4, 2017). Review of § 1B1.10 as of the date of this Order reveals that Amendment 794 has not been added to the list.

ORDER

IT IS, THEREFORE, ORDERED that defendant's pro se Motion Requesting Modification of Sentence Pursuant to 18 USC 3582 for Minor Role participant - USSG Amendment 794 (#476) is **DENIED**.

Signed: March 8, 2018



Max O. Cogburn Jr.
United States District Judge